IN THE HIGH COURT OF JUDICATURE OF ANDHRA PRADESH AT HYDERABAD

THE HON'BLE SRI JUSTICE GOPALAKRISHNA TAMADA

Writ Petition No.4249 of 2002

Dated: 03-10-2007

Between:

The Tenali Cloth Merchants Association,
rep. by its Authorized Signatory and Secretary,
Tenali.

... Petitioner

and

1. Government of Andhra Pradesh,
   rep. by its Secretary,
   Municipal Administration,
   Secretariat,
   Hyderabad and 2 others.

... Respondents

ORDER:

The Tenali Cloth Merchants Association, which is an Association registered under the Societies Registration Act,1860 filed the present writ petition for issuance of a *mandamus* declaring the action of respondent Nos.2 and 3 in issuing the extraordinary Gazettee Notification enhancing or fixing the licence fee insofar as item No.57 is concerned, i.e. for storage of clothes made of silk, nylon, terlin, polyster etc. at Rs.500/-, as arbitrary and illegal.

2. Facts, in brief, are: The members of the petitioner's Association are doing business in silk, terlin, polyester and cotton fabrics either by selling them on item-wise, lots or weight basis. It is stated that they keep the material in their stores and take required precautions for their storage and sale. Initially, the second respondent was levying a licence fee of Rs.30/- and later enhanced the same to Rs.39/- and ultimately to Rs.100/- per annum and the last enhancement of Rs.100/- was in November, 2000. By virtue of the present extraordinary G.O. the licence fee was enhanced to Rs.500/- per annum. According to the petitioner, the product in which its members are dealing viz., polyster, terlin, terricotton and cotton, is not at all combustible material falling within the Schedule IV (r) of the Andhra Pradesh Municipalities Act, 1965 (for short, 'the Act'). The said enhancement is questioned in the instant writ petition.

3. A counter affidavit is filed denying the averments mentioned in the affidavit filed in support of the writ petition.

4. Interpreting Section 263 of the Act, this Court in **M/S. FERTILIZERS, PESTICIDES AND SEEDS DEALERS WELFARE ASSOCIATION v. MUNICIPAL COUNCIL, SURYAPET MUNICIPALITY**[1] has taken the view that the said provision of law lays down that the Municipal Council may publish a notification prohibiting any business enumerated in Schedule IV except in accordance with the licence issued by the Commissioner. However, such a power of the Council is restricted only in relation to various purposes specified in Schedule IV. It is also held that there is no denial of the fact that as Schedule IV exists on the statute book as on today, the fertilizers business, cloth business and kirana business are not explicitly mentioned and therefore, the Municipal Council cannot be said to have any power. Further, it is also held that it is also not possible to enlarge the scope of various entries in Schedule IV as per the judgment of this Court in ***Satyanarayana Trading Co. Vs. Secretary and Special Officer – 1980 (1) An.W.R.288*****.** Thus discussing the learned Judge has taken the view that it is impermissible to read cloth business in entry (s) or fertilizers business

in entry (v). As the one, which included in item No. 57 of the impugned Gazette Notification is cloth business; this Court is of the view that the Municipal Council has no power to impose the said licence fee.

5. No doubt, it is mainly contended by the respondent Municipality stating that the petitioner approached this Court and filed the writ petition without filing the statutory appeal as provided for under Section 345 of the Act. In the light of the said submission this Court has looked into the provisions of Section 345 of the Act. An appeal under Section 345 of the Act is provided for against the orders or notice issued under the provisions of law mentioned in the said provision. But curiously the Gazette notification was issued under Sections 260, 263 of the Act (Of course there are several other provisions of law). From this it is clear that for the proceedings or notices issued either under Section 260 or under Section 263 of the Act, the appeal provided for under Section 345 of the Act cannot be applied for.

6. Accordingly, the writ petition is allowed and the impugned Gazette notification of November,2000, insofar as item 57 relating to cloth business is concerned, is set aside. No costs.

JUSTICE GOPALAKRISHNA TAMADA

Dt.03-10-2007
GLV

---

[1] 2006 (2) ALT 108